

S. Ct. 1057 (2007),² Oklahoma’s punitive damages statute, Okla. Stat. tit. 23, § 9.1, is facially unconstitutional.

This motion is premature. In Phillip Morris, the Supreme Court strongly suggested that state legislatures should be given a chance to amend their punitive damages statutes before courts considered the constitutionality of state punitive damages statutes. Phillip Morris, 127 S. Ct. at 1065 (“Although the States have some flexibility to determine what *kind* of procedures they will implement, federal constitutional law obligates them to provide *some* form of protection in appropriate cases.”). Defendants explicitly state that the Court should defer to the legislature before permitting plaintiffs to proceed with their claim for punitive damages, as they conclude their motion by noting:

The Oklahoma punitive damages statute became unconstitutional the moment *Williams* was handed down. The Oklahoma Legislature has articulated that the State’s interest is to establish inflexible standards that a jury must consider when deciding whether to award punitive damages. . . . And the interests of the State in reacting to this development must continue to be articulated by the Legislature. As Constitutional rights evolve, so does a state’s perception of the interests of its citizens. Who knows what the Legislature will do when it recognizes that there is currently no constitutionally valid procedure for punitive damages in civil cases? Whatever the ultimate outcome, it would be an odd result for this Court to be the one to answer the questions first.

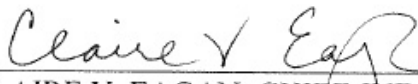
² Defendants have attached a copy of Phillip Morris to their motion. However, it is not necessary for defendants to include a copy of this case with every motion on the issue of punitive damages. The Court was well aware of this opinion on the day it was decided and, at this point, defendants are cluttering the Court’s CM-ECF system by attaching the case as an exhibit. Aside from the fact that the Court has Westlaw and would read Supreme Court decisions before issuing an opinion on federal constitutional law, Phillip Morris has been published in the Supreme Court Reporter and copies are available to the general public.

Dkt. # 502, at 8. As defendants have so eloquently articulated, the Court should defer to the Oklahoma Legislature before ruling on the constitutionality of Oklahoma's punitive damages procedures.

This case is not set for trial until August 27, 2007 and, even if the Court were to conclude that section 9.1 is unconstitutional, there is not an immediate risk that punitive damages will be imposed against defendant under an unconstitutional procedure. Phillip Morris was decided on February 20, 2007, and the Oklahoma Legislature has not had sufficient time to address section 9.1 in light of this decision. Therefore, defendants' motion will be denied at this time, without prejudice to their right to file a motion on this issue if the Legislature has not amended section 9.1 before trial. Defendants may file a motion on this issue on July 20, 2007, if the Oklahoma Legislature has taken no action concerning section 9.1, and the Court will review the constitutionality of the statute at that time. At this time, defendants' motion is premature and is denied without prejudice to refiling.

IT IS THEREFORE ORDERED that the Motion of Defendants Blue Tee Corp. and Gold Fields Mining LLC for Judgment on the Pleadings on Plaintiffs' Punitive Damage Claims and Brief in Support Thereof (Dkt. # 502) is **denied**, without prejudice to refiling on July 20, 2007, if Okla. Stat. tit. 23, § 9.1 has not been amended in light of the Supreme Court's ruling in Phillip Morris.

DATED this 27th day of February, 2007.


 CLAIRE V. EAGAN, CHIEF JUDGE
 UNITED STATES DISTRICT COURT